

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 154 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

PATEL MAGANLBHAI REVIDAS

Versus

PATEL SOMABHAI REVIDAS

Appearance:

MR MC SHAH for Petitioners

RULE SERVED for Respondent No. 1, 2, 3, 4, 5, 6, 7

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 29/08/98

ORAL JUDGEMENT

The respondents are served. They are absent.
They have not engaged any Counsel. Shri M.C.Shah,
learned Counsel for the revisionists has been heard and
the record has been perused.

After examining record and the impugned order so
also the memo of revision there should be no hesitation

in observing that the revision is not maintainable.

The brief facts are that upon respective contentions of the parties the Trial Court framed material issues. When the parties were going to adduce evidence an application was moved by the plaintiffs that on issue No.2, onus of proof lies upon the defendants to prove that they have right of way over the land of the plaintiffs and as such the defendants should begin with evidence in this case. This application was rejected by the Trial Court. Hence, this revision. An order of this nature has not decided any case between the parties and as such revision against such order is not maintainable. I am not impressed with the contention of the learned Counsel for the revisionists that the revision is maintainable.

It may incidentally be mentioned that the case of the plaintiff was that the defendants have no right of way for cattle, cart and tractor etc., through plaintiffs' survey plot No.34. The defendants contention was that they have right of way through plaintiffs aforesaid survey plot. Upon these, issues No. 1 and 2 were framed. It is settled law that on issue No.1 the burden of proof lies upon the plaintiffs and it was for the plaintiffs to adduce evidence first. The defendants could adduce evidence in rebuttal of the plaintiffs case. It was not necessary for the Trial Court to frame issue No.2 and what is contained in issue No.2 is nothing but defence of the defendants and the defendants could be permitted to adduce evidence after plaintiffs evidence was over in support of their case. Thus, if certain redundant issue was framed it cannot be said that the right to begin in the circumstances of the case shifted to the defendants. There is no illegality as well as jurisdictional error in the impugned order.

For the reasons given above the revision is dismissed.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt